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June 21, 1993

Our File No.
1024-101-71

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Reference: MM Docket No. 93-51
New Albany, Indiana

Rita Reyna Brent
File No. BPH-911115MC

Dear Ms. Searcy:

Submitted herewith on behalf of Rita Reyna Brent are an original and six copies of a **Request for Permission to File Appeal** in the above referenced proceeding.

If there are any questions in regard to this matter, kindly communicate directly with this office.

Respectfully submitted,

RITA REYNA BRENT

By 

John Wells King
Henry A. Solomon

HAS:dh
Enclosure

Her Attorneys

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FEDERAL COMMUNICATIONS COMMISSION
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In The Matter Of

MM Docket No.

93-51

For Construction Permit for a New FM Station on Channel 234A in New Albany, Indiana

Request for Permission to File Appeal

Rita Reyna Brent ("Brent"), by her attorneys and pursuant to

Huber's disbelief that "the Brents" ¹ are rich enough to fund Brent's proposal.

2. The scope of the issues is even broader than Huber sought. The Presiding Judge has required Brent not only to prove her financial qualifications, but also to justify her estimated costs of construction and operation ("Nor is there any reference made to an estimate of the costs").² Huber has never questioned the adequacy of Brent's cost estimates or suggested that prior to certifying Brent did not engage in serious and reasonable efforts to ascertain them.³

3. Brent thought she was being faithful to Huber's repeated assertions that words in litigative pleadings should have their plain-English meaning. It is apparent that since the *Order* does not embrace Huber's claim, the Presiding Judge accepted Brent's and her counsel's explanation that there was never any intent to assert that Brent lacked Form 301 documents at the time she certified. In other words, a pleading opposing Huber's motion to compel production did not contain what Huber characterized as an "admission against interest." Thus Brent's Declaration carefully tracks not only Huber's charge that Form 301 documents were lacking, but also the language of Instruction D.(3)(a) relied on by Huber, which provides that a certifying applicant must have

¹ Huber has always recognized what Section III of Brent's Form 301 makes plain, that joint funds will be used. *See, e.g.*, Huber Petition to Enlarge Issues at 3; Huber Reply at 3, 6. *See also* Attachment A, hereto, page 22 of Brent's deposition conducted by Huber's counsel on May 26, 1993.

² The Presiding Judge makes this observation notwithstanding that estimates of costs are not "301 documents." *See* Form 301 Instruction D.(3)(a).

³ If the Presiding Judge denies this Appeal, he is urged to limit the scope of the issues to a determination whether Brent and her spouse had combined liquid assets to build and operate as proposed.

“on hand” a “current balance sheet.” Thus, Brent used precisely this terminology in her Declaration.

4. The Presiding Judge makes clear at Paragraph 7 of the *Order*, his concern and the reason why he enlarged. He states that “there is no identification of those documents [*i.e.*, “a current balance sheet”] as being joint financials which would reflect the combined liquid assets of Brent and her spouse.” Brent (and her counsel) were surprised and dismayed by this finding. Brent’s financial source is funds held jointly with her husband—as shown in her application, as she testified in deposition, and as acknowledged by Huber. For the record, Brent makes clear in the attached Declaration that the current balance sheet she had on hand at certification was a joint balance sheet of her and her husband.


5. Brent appreciates the Presiding Judge’s belief that the issues he has specified can be met with a minimum of proof at hearing, but Brent respectfully differs on the point. To Brent, the question is not whether she may meet the issues with a minimum of effort, but whether justice would be served by requiring her to meet them in the face of such a capricious circumstance—a misapprehension of what Brent meant when she responded fully, accurately, precisely, and in good faith, to Huber’s specific allegation. She believes this matter may be resolved literally by the insertion of a single word (“joint”) in her prior Declaration. In this way, the Commission’s and the parties’ resources will be

conserved, and this proceeding will not become unnecessarily complicated.⁴

Accordingly, Brent respectfully asks the Presiding Judge to grant the relief requested.

Respectfully submitted,

RITA REYNA BRENT

By 
Henry A. Solomon
John Wells King
Her Attorneys

HALEY, BADER & POTTS
4350 North Fairfax Drive, Suite 900
Arlington, VA 22203-1633

June 21, 1993

⁴ The *Order* requires Brent to produce her Form 301 documents within three days of its release, which obligates Brent to exchange her documents on June 22, 1993. Brent respectfully requests that the Presiding Judge stay the production of documents pending his action on this Request.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
FCC 93M-247 31482

In re Applications of) MM DOCKET NO. 93-51
MARTHA J. HUBER) FILE NO. BPH-911114ME
RITA REYNA BRENT) FILE NO. BPH-911115MC
MIDAMERICA ELECTRONICS SERVICE,)
INC.) FILE BPH911115ML
STATION COMMUNICATIONS, INC.) FILE NO. BPH-911115MU
For Construction Permit for a)
New FM Station on Channel 234A)
in New Albany, Indiana)

DEPONENT: Rita Reyna Brent
DATE: May 26, 1993
REPORTER: Kitty Karem

COULTER, KAREM & McBRIDE
COURT REPORTERS
765 Starks Building
Louisville, Kentucky 40202
(502) 582-1627

1 in ruling on our motion for documents the judge -- there
2 was one small area where the judge said we could try to
3 clarify some matters on a deposition.

4 MR. SOLOMON: You ask slowly, give me
5 time to object.

6 Q In your application it's indicated that
7 the funds to construct and operate the station will come
8 from funds of you and your husband; is that correct?

9 A That's correct.

10 Q And I'll ask you will your husband have
11 any ownership interest in this station?

12 A No.

13 Q And can you explain why, although he's
14 providing funds, he won't have any ownership interest in
15 the station?

16 A It's mine. It's mine to run. It's my
17 business. He has a business to run.

18 Q That's this PP --

19 A PPB, Inc.

20 Q Is that his full-time occupation?

21 A Yes, he's Mr. B of PPB.

22 Q Did you discuss any aspect of the New
23 Albany application prior to the filing with Dorothy Ott or
24 Lee Stinson?

25 A No. Dorothy is aware that I filed.

Attachment B

DECLARATION OF RITA REYNA BRENT

I, Rita Reyna Brent, do hereby declare as follows:

In my Declaration of May 26, 1993, I stated that when I signed my application I had on hand a current balance sheet.

I hereby affirm that such balance sheet was a joint balance sheet of Rita Reyna Brent and Robert W. Brent, my husband.

CERTIFICATE OF SERVICE

I, Jennifer J. Britt, a secretary in the law firm of Haley, Bader & Potts, hereby certify that a copy of the foregoing **"Request For Permission To File Appeal"** was mailed, postage prepaid, this 21st day of June, 1993, to the following:

The Honorable Richard L. Sippel *
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Suite 214
Washington, D.C. 20554

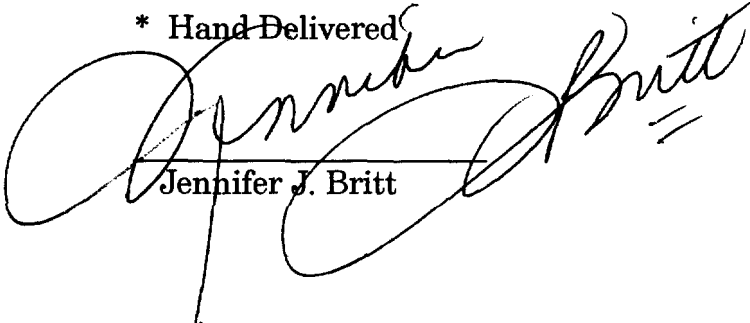
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* Hand Delivered


Jennifer J. Britt